

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF  
THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

ejs

Mailed: 1/12/04

Opposition No. 91151171

Angel World, Inc.

v.

Treasures and  
Trinkets Inc.

Before Seeherman, Bottorff and Drost, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Opposer has filed a request for reconsideration of the Board's July 11, 2003 decision granting summary judgment to applicant on the issue of res judicata, and dismissing the opposition with prejudice. In addition, opposer has filed a supplemental memorandum, with accompanying exhibits.<sup>1</sup>

Applicant has opposed the request.

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<sup>1</sup> These exhibits are documents relating to the civil action in the Federal District Court of South Carolina, including the transcript of the jury trial. These documents are the type of evidence that should have been submitted by opposer with its opposition to the motion for summary judgment, rather than with its request for reconsideration. Despite this, we have considered the documents. However, because, as explained herein, our role is not to substitute our judgment for that of the Federal Appeals Court in terms of reviewing the fairness of the civil action, these documents have no effect on our finding of res judicata.

The Board, in its earlier decision, found that the finding in favor of applicant herein by the District Court for the District of South Carolina<sup>2</sup> has a preclusive effect on opposer's ability to relitigate the issue of ownership of the mark GUARDIAN ANGEL in the present opposition. Opposer essentially argues that the prior proceeding should not have a preclusive effect because opposer contends that the issues of ownership and infringement were not fairly litigated, and that opposer "has not yet had a full and fair opportunity to litigate the issue." Brief, p. 8.

As the Board previously noted, on April 18, 1996, after a jury trial, a verdict was rendered in the Federal District Court action finding that applicant herein is entitled to the trademark GUARDIAN ANGEL as it relates to jewelry products, and this decision was subsequently affirmed by the Fourth Circuit Court of Appeals on June 11, 1997.<sup>3</sup> As also noted by the Board in the prior decision, opposer had raised before the Fourth Circuit Court of Appeals its complaints regarding its counsel and the manner in which the civil action was tried, and the appellate court rejected these arguments in affirming the District Court decision. As a result, opposer's complaints about the District Court proceeding have no effect on our finding of res judicata.

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<sup>2</sup> Angel World, Inc. and Martha M. Powers v. Treasures and Trinkets, Inc., No. C/A 6P95-1349-3 (D.S.C. April 18, 1996).

<sup>3</sup> Civ. No. 96-1776.

We do not have the authority, nor do we presume, to review a decision by the Court of Appeals.

Opposer also argues that the Federal District Court action involved Angel World, Inc., but not Martha Powers personally. Opposer appears to be making this argument with respect to her personal liability for attorneys fees and costs in the civil action. In any event, the present opposition is brought by Angel World, Inc., and there is no question that the corporation was a named party in the civil action.

Opposer also asserts that its notice of opposition states a claim of unfair business practices and "continuance of infringement on [its] mark." Brief, p. 2. These are not grounds for opposition. As noted in the Board's July 11, 2003 decision, not all claims which may be brought in a federal district court action are cognizable claims in an opposition proceeding before the Board.<sup>4</sup>

Decision: Opposer's request for reconsideration is denied.

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<sup>4</sup> To the extent that opposer's infringement claim can be considered analogous to a claim of likelihood of confusion, the finding by the Federal District Court that applicant herein is entitled to the trademark GUARDIAN ANGEL as it relates to jewelry products has a preclusive effect on opposer's likelihood of confusion ground.